Supreme Court, U.S.
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No. 96-810

In The

Supreme Court of the United States

October Term, 1996

WILLIAM DONNIE ASHLEY,

Petitioner,

vs.

CITY OF HUNTSVILLE, ET AL.,

Respondents.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Eleventh Circuit

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

1. Was this case properly decided by the trial and appellate courts of the State of Alabama and by the Eleventh Circuit Court of Appeals under the authority of *Town of Newton v. Rumery,* 480 U.S. 386, 107 S.Ct. 1187, 94 L.Ed.2d 405 (1987).

LIST OF PARTIES

William Donnie Ashley
City of Huntsville, Alabama
Rex Reynolds
William E. Payne, Jr.
Jerry Hammonds
Richard Ottman
Ron Fudge
Jim Cook
Billy Ware
Walter Pride
Jesse Seroyer, Jr.

TABLE OF CONTENTS

Page

Question Presented i

Table of Authorities iii

Statement of Case 1

Reasons for Not Granting the Writ 3

Conclusion 7

TABLE OF AUTHORITIES

Cases

Town of Newton v. Rumery, 480 U.S. 386, 107 S.Ct. 1187, 94 L.Ed.2d 405 (1987) 3, 4

STATEMENT OF THE CASE

The Respondents assert that there are several misstatements of fact in the Petitioner's Statement of the Case.[1] Specifically, the Respondents challenge the following:

1. The Respondents deny that the Petitioner, William Donnie Ashley (hereinafter "Ashley"), was "enticed into a sting operation" (Pet. at 4) and instead assert that Ashley purchased one kilogram of cocaine from an undercover police agent.

2. The Respondents contest the following description of events: "Ashley shifted his vehicle into gear and attempted to flee. Ashley's vehicle struck a tree, apparently knocking the vehicle out of gear, and Ashley's vehicle drifted backwards as Ashley attempted to get the vehicle into gear again. At approximately the same instant that Ashley got the vehicle back into gear, he was shot in the face at point blank range by a Huntsville police officer." (Pet. at 4).

The Respondents assert that Ashley intentionally drove recklessly and endangered the lives of the Huntsville police officers at the scene. Likewise, the police officer who shot Ashley acted in self defense.

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[1] These factual allegations are irrelevant and immaterial to this suit, which was resolved below by the entry of summary judgment in favor of the Respondents. The Respondents, however, set forth their challenges to prevent any waiver of their disagreement with the facts as asserted by the Petitioner.

3. The Respondents also disagree with Ashley's description of the proceedings leading up to and including his plea agreement, which are stated in the Petition as follows: "When this case came to trial, Ashley perceived that his attorney was not ready for trial, and the trial court would not grant a continuance. While the trial judge waited in chambers, Ashley, his attorney, and the district attorney were involved in the courtroom plea bargaining the case. Ashley's choices were to go to trial and risk a 15 year to life sentence, or plea bargain for 3 years imprisonment. Under constant pressure to accept the bargain, and finally after urging by his family to accept the bargain, Ashley agreed to the 3 years of imprisonment.

"The plea bargaining included a provision that Ashley would execute releases releasing the City of Huntsville, State Attorney General and certain agents thereof from civil liability for their actions. Ashley first saw this release provision approximately fifteen (15) minutes prior to the judge entering the courtroom to receive the plea bargain and Ashley's assent thereto."

The Respondents assert that Ashley was represented by two able attorneys, that Ashley understood the terms of the plea agreement and voluntarily agreed to the same, and that Ashley had the advice of his attorneys and family at the time he entered into the plea agreement. Moreover, Ashley released the City of Huntsville and its agents, and the Alabama Attorney General's office and its agents, as part of his plea bargain. Ashley also accepted the plea agreement in open court and represented to the Circuit Court Judge in response to pointed and unambiguous questions that he was voluntarily entering the

agreement with full knowledge of its terms. A review of the transcript can leave little doubt as to Ashley's representations to the Court concerning his understanding of the terms at the plea agreement.

REASONS FOR NOT GRANTING THE WRIT

1. Ashley Has Offered No Valid Reason For The Issuance Of A Writ of Certiorari In This Matter.

Ashley has alleged two arguments in support of his Petition for a Writ of Certiorari: (1) that a release agreement is void as against public policy or at least subject to more stringent review than provided under *Town of Newton v. Rumery*, 480 U.S. 1187 (1987), if it is entered in conjunction with a plea agreement under which the Defendant accepts a prison sentence; and (2) that the public policy of Alabama prohibits "civil agreements based upon consideration of forbearance of criminal prosecution." (Pet. at 7-8). Both arguments are unfounded and do not justify the issuance of a writ of certiorari in this case. Additionally, the second asserted argument is a misstatement of Alabama law.

a. Ashley's Release and Plea Agreement is not void as against federal public policy.

Ashley argues that his release was void as against public policy because he entered into the release in conjunction with a plea agreement under which he accepted a prison sentence. (Pet. at 7). Alternatively, Ashley argues that such release agreements should be construed more stringently than those agreements under which criminal charges are dismissed. (*Id.*). These arguments are

unfounded and, in fact, are contrary to sound policy considerations.

Ashley knew he would receive a prison sentence if he were found guilty at trial. He also knew he would receive a prison sentence if he consented to the plea agreement, which included the release provision at issue in this case. The choice before Ashley therefore was potentially much less coercive than the choice presented to criminal defendants for whom charges will be dismissed in exchange for a release agreement.

Moreover, Ashley's release and plea agreement satisfied the requirements set forth by this Court in *Town of Newton v. Rumery*, 480 U.S. 386, 394 (1987). Ashley entered the plea agreement voluntarily, there is no evidence that the release was tainted by prosecutorial overreaching, and the release does not negatively impact any external public interest. The plea agreement, including the release provision, was also judicially supervised. Ashley was repeatedly asked specific questions *by the trial judge* about the implications of the release and gave clear, unmistakable answers to those questions. One of those questions in fact confirmed that Ashley had discussed the release with his attorney, the competence of whom is not questioned.

Furthermore, Ashley received substantial benefits in exchange for his decision to release the Respondents and to enter into the plea agreement. The prosecution agreed to reduce the charges against Ashley, which resulted in a corresponding reduction in the punishment to which Ashley was subject. At the very least, Ashley received a twelve-year reduction in sentence and a $200,000.00

reduction in fine in exchange for his agreement to release the City of Huntsville and its agents from liability.

Ashley's release therefore satisfies all applicable public policy considerations, and this Court should deny Ashley's Petition for Writ of Certiorari on this issue.

b. Ashley's Release and Plea Agreement is not void as against the public policy of Alabama.

Ashley also argues that "civil agreements based upon consideration of forbearance of criminal prosecution are void as a matter of public policy" in Alabama. (Pet. at 8). This argument is wholly unfounded and is a misstatement of Alabama law. The public policy of Alabama that is supported by the authorities cited in the Petition prohibits parties and attorneys from using the threat of a criminal action to coerce a settlement in an ongoing civil case or dispute. Such a rule has no bearing on the instant case. Ashley was not involved in a civil suit or dispute, nor was he coerced into settling such a suit or dispute.

Moreover, Ashley was not threatened with a criminal action. Rather, Ashley was already charged for trafficking in cocaine as a result of his purchase of one kilogram of cocaine. The District Attorney's Office had a strong case and was prepared to go forward with trial. Ashley, however, negotiated with the prosecution and agreed to a plea bargain. As part of the plea agreement, the prosecution received Ashley's release of any claims Ashley might decide to bring against the State, the City, or their agents as a result of his arrest and apprehension.

No public policy concerns in Alabama prohibit such release agreements, and Ashley's release is valid and enforceable. The cases cited by Ashley do not support the proposition argued in the petition nor do they establish any public policy pertinent to this case. This Court therefore should deny Ashley's Petition for Writ of Certiorari on this issue.

2. This Case Involves No Issues Or Matters That Justify The Issuance Of A Writ Of Certiorari.

This case simply presents no issues that would justify a Writ of Certiorari from this Court. Ashley voluntarily entered into a plea agreement under which he received substantial benefits. He now seeks to avoid his responsibilities under that agreement. Ashley, however, has no legal justification to set aside the agreement. It was judicially supervised at its inception, and Ashley was fully informed about the release and was assisted by able legal counsel in entering the agreement.

Moreover, the very issues raised by Ashley in this Petition have been reviewed and rejected by the trial court that took Ashley's plea, the Alabama Court of Criminal Appeals, the United States District Court for the Northern District of Alabama, Northeastern Division, and the Eleventh Circuit Court of Appeals. None of these courts identified any novel issue of law requiring consideration by this Court; they *all* found Ashley's contentions to have no merit.

Ashley plainly is not entitled to the relief he seeks; the plea agreement and release is valid and enforceable

under applicable law, and Ashley must accept the consequences of his bargain. There is no justification based on law or public policy for further review by this Court. This Court thus should deny Ashley's Petition for Writ of Certiorari.

CONCLUSION

Ashley has presented no issue of law or of public policy justifying further review by this Court. The Court should deny the petition for writ of certiorari.

Respectfully submitted,

E. CUTTER HUGHES, JR.
Attorney for Petitioner

Date: December 24, 1996